

ESTTA Tracking number: **ESTTA570855**

Filing date: **11/14/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Simit Sarayi Yatirim Ve Ticaret A.S.		
Entity	Corporation	Citizenship	Turkey
Address	Eyâ¼p Sultan Mahallesi Ibni Sina, Caddesi No:21 Sancaktepelistanbul, TURKEY		

Attorney information	Michael J. McCue Lewis Roca Rothgerber LLP 3993 Howard Hughes Parkway Ste. 600 Las Vegas, NV 89169 UNITED STATES TRADEMARKS-LASVEGAS@LRRLAW.COM, MMCCUE@LRRLAW.COM Phone:702.949.8200
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Applicant Information

Application No	85940333	Publication date	10/22/2013
Opposition Filing Date	11/14/2013	Opposition Period Ends	11/21/2013
Applicant	Simit and Smith Inc 721 Anderson Avenue Cliffside Park, NJ 07010 NJ		

Goods/Services Affected by Opposition

Class 043. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Restaurant services
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3983490	Application Date	01/28/2010
Registration Date	06/28/2011	Foreign Priority Date	NONE
Word Mark	SIMIT SARAYI		

Design Mark	SIMIT SARAYI
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 0 First Use In Commerce: 0 coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour; bread, pastry, confectionery made of sugar, frozen confectionery; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces and condiments, namely, mayonnaise, mustard, ketchup, hot sauce, and tomato salsa; spices; ice Class 043. First use: First Use: 0 First Use In Commerce: 0 Services for providing food and drink, namely, restaurant services

U.S. Application No.	79133970	Application Date	08/28/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SIMIT SARAYI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 0 First Use In Commerce: 0 Meat, fish, poultry and game; all kinds of processed meat products; dried beans; ready soups, bouillon; olive, olive pastes; milk and milk products (including butter); edible vegetable oils; dried, canned, preserved, frozen, cooked, smoked, pickled fruits and vegetables; nuts, prepared; nut and peanut butter, sesame oil, tahini; eggs, powdered eggs; potato chips Class 030. First use: First Use: 0 First Use In Commerce: 0 Coffee, cocoa, coffee or cocoa based beverages, chocolate based beverages; macaronis, pastas, noodles; pastry and bakery goods and products, desserts namely cakes and confectionery; honey, royal jelly for human consumption, not for medical purposes, propolis; seasonings and flavourings for foods; yeast, baking powders; all kinds of flour, semolina, starches; granulated sugar, cube sugar, powdered sugar; teas, iced teas; confectionery, candy, chocolates, biscuits, crackers, wafers; gums; ice creams, edible ices; salt; cereal and grain based foods; syrups for culinary purposes Class 035. First use: First Use: 0 First Use In Commerce: 0 Advertising, marketing and public relations services (including organization of exhibitions and fairs for commercial and advertising purposes); office services; business management, administration and consulting on these issues; accounting (including import, export, agency services); valuation services for commercial and industrial products; organization and arrangement of auctions; the bringing together, for the benefit of others, of food and beverage, meat, fish, poultry and game, all kinds of processed meat products, dried beans, ready soups, bouillon, olive, olive pastes, milk and milk products (including butter), edible vegetable oils, dried, canned, preserved, frozen, cooked, smoked, pickled fruits and vegetables, nuts, nut and peanut butter, sesame oil, tahini, eggs,		

	<p>powdered eggs, food supplements not for medical purposes (including pollen, proteins, carbohydrates), potato chips, coffee, cocoa, coffee or cocoa based beverages, chocolate based beverages, macaronis, pastas, noodles, pastry and bakery goods and products, desserts, honey, royal jelly for human consumption, propolis, seasonings and flavourings for foods, yeast, baking powders, all kinds of flour, semolina, starches, granulated sugar, cube sugar, powdered sugar, teas, iced teas, confectionery, candy, chocolates, biscuits, crackers, wafers, gums, ice creams, edible ices, salt, cereal and grain based foods, boiled grape juice, syrup, bagel and bagel products, donut ring, bagel ring, varieties of bagels, spring rolls, pies, dumpling, plum cake, pancakes, muffins, crepes, bakery products, oranges and yoghurt based cookies, muffins with tahini, types of pasta, roll, wrapper, pita, sandwich, dairy desserts, bread, salads, toast, hot and cold drinks, beverages, enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, through mail order catalogues or by means of electronic media, for example, through web sites or television shopping programmes</p> <p>Class 043. First use: First Use: 0 First Use In Commerce: 0</p> <p>Services for providing food and drink; temporary accommodation services (including day care, nursery services); pet boarding services and pet day care services</p>
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Attachments	<p>79082678#TMSN.jpeg(bytes)</p> <p>79133970#TMSN.jpeg(bytes)</p> <p>simit.pdf(38959 bytes)</p>
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Michael J. McCue/
Name	Michael J. McCue
Date	11/14/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SIMIT SARAYI YATIRIM VE TICARET A.S. , a Turkey corporation, Opposer, v. SIMIT AND SMITH, INC. , a New Jersey corporation, Applicant.	Mark SIMIT + SMITH (and design) Serial No. 85940333 Published October 22, 2013
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NOTICE OF OPPOSITION

Pursuant to 15 U.S.C. § 1063 and 37 C.F.R. § 2.101, Opposer SIMIT SARAYI YATIRIM VE TICARET, A.S., a Turkish company (“Simit Sarayi”), hereby opposes Applicant SIMIT AND SMITH, INC.’s application to register the SIMIT + SMITH and design mark (“SIMIT + SMITH Mark”) in International Class 43 for restaurant services (Serial No. 859403333).

As grounds for its opposition, Simit Sarayi alleges as follows:

1. Simit Sarayi owns and operates a chain of pastry and tea restaurants in Turkey, the United States, Cyprus, Germany, the Netherlands, and Saudi Arabia.

2. Simit Sarayi owns U.S. trademark registration no. 3983490 for SIMIT SARAYI and design for “[s]ervices for providing food and drink, namely, restaurant services” in International Class 43 and “coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour; bread, pastry, confectionery made of sugar, frozen confectionery; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces and condiments,

namely, mayonnaise, mustard, ketchup, hot sauce, and tomato salsa; spices; ice” in International Class 30. The filing date of the application was January 28, 2010, and the date of registration of June 28, 2011.

3. Simit Sarayi also owns a pending U.S. trademark application (Serial No. 79133970) for SIMIT SARAYI and design for “[s]ervices for providing food and drink” and other services in International Class 43, in addition to goods and services in other classes. The filing date of the application was August 28, 2012.

4. On May 23, 2013, Applicant Simit and Smith filed its intent to use application (Serial No. 85940333) for the SIMIT + SMITH Mark for “restaurant services” in International Class 43.

5. Simit Sarayi’s use, application, and registration of the SIMIT SARAYI mark predates Applicant’s registration and use of the SIMIT + SMITH Mark.

6. Applicant’s registration of the SIMIT + SMITH Mark is likely to cause confusion, to cause mistake or to deceive consumers. Applicant’s SIMIT + SMITH Mark is confusingly similar to Simit Sarayi’s SIMIT SARAYI marks. Applicant is seeking to register its mark for restaurant services, which are within the scope of Simit Sarayi’s existing federal trademark registration and pending application. Applicant’s applied for services are identical, similar or related to goods and services offered by Simit Sarayi or within Simit Sarayi’s natural zone of expansion.

7. Simit Sarayi will suffer damage including irreparable injury to its reputation and goodwill if Applicant is permitted to register the SIMIT + SMITH Mark in the United States.

WHEREFORE, Simit Sarayi prays that the opposition be sustained and that the Board refuse Applicant's application to register the SIMIT + SMITH Mark.

Pursuant to 37 C.F.R. § 2.6(a)(17), please deduct the opposition fee in the sum of \$300.00, from the Lewis Roca Rothergerber LLP deposit account no. 502847.

Dated: November 14, 2013

Respectfully submitted,

LEWIS ROCA ROTHGERBER LLP



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Counsel for Opposer

CERTIFICATE OF SERVICE

I hereby certify that, on this 14th day of November, 2013, a true and complete copy of the foregoing Notice of Opposition was served by United States mail, first class postage prepaid, on the following counsel of record for Applicant:

Gokalp Bayramoglu
Bayramoglu Law Offices, LLC
8275 South Eastern Avenue Suite 200-611
Las Vegas, NV 89123

/s/ Tammy L. Bunch
An employee of Lewis Roca Rothgerber LLP